

**MINUTES**  
**KENTUCKY BOARD OF PHARMACY**  
Spindletop Administration Building, Suite 302  
2624 Research Park Dr.  
Lexington, Kentucky

January 8, 2008

**CALL TO ORDER:** A regular meeting of the Kentucky Board of Pharmacy was held at the Board Office at Spindletop Administration Building, 2624 Research Park Drive, Lexington, Kentucky. President Leake called the meeting to order at 9:02 a.m.

Members present: Mike Leake, Peter Orzali, Anne Policastri, Catherine Shely, Sandy Simpson, and Patricia Thornbury. Staff: Michael Burleson, Executive Director; Jeffrey L. Osman, Pharmacy Inspections and Investigations Coordinator; Katie Busroe, Steve Hart and Phil Losch, Pharmacy and Drug Inspectors; Lisa Atha, Executive Secretary; and Cheryl Lalonde, Assistant Attorney General and Board Counsel. Guests: Brian Fingerson, Pharmacist Recovery Network Committee; Catherine Hanna, APSC; Brad Hall, Kentucky Pharmacists Association; Brandi Johnson, CVS; Laurence Chai, Jaime Kenney, Phillip McCreary and April White, College of Pharmacy students. Melanie Curtis, Court Reporter, recorded the meeting.

**NEW BOARD OFFICERS:**

W. Michael Leake was sworn in by Dr. Jeffrey L. Osman as President of the Board for 2008, and Dr. Catherine Shely was sworn in by Dr. Jeffrey L. Osman as President Elect of the Board for 2008.

Mr. Leake presented Mr. Orzali with a plaque and lapel pin commemorating his year as President of the Board.

**MINUTES:** On motion by Dr. Policastri, seconded by Mr. Orzali and passed unanimously, the Minutes of December 12, 2007 were adopted as amended.

**BOARD REPORTS:**

**Board President.** Mr. Leake suggested Louisville as the location of the Board Retreat, November 15-16, 2008. Mr. Orzali moved to have the Board Retreat in Louisville, November 15-16, 2008, at a place designated by the Executive Director. There was much discussion regarding the format, promotion and agenda for the retreat. Mr. Burleson is to solicit agenda items starting in May 2008, publish information regarding the retreat in the June 2008 Board Newsletter, and define the retreat on the Board website. Brad Hall, Executive Director of the Kentucky Pharmacist Association, will work with the Board to advertise the Retreat in the *Kentucky Pharmacist*. Dr. Policastri seconded and the motion passed unanimously.

Mr. Leake asked for discussion and opinion regarding the New Licensee Reception. After much discussion, Dr. Policastri volunteered to poll the students about their interest

and thoughts about the reception attendance and location. Mr. Leake asked that she proceed and report her findings to the Board for further discussion at her earliest convenience.

**Board Members.** Dr. PolICASTRI presented a detailed report of topics discussed at the session for State Boards of Pharmacy Members at the American Society of Health-System Pharmacists (ASHP) meeting in December 2007. Much of the discussion centered on technician registration with other topics being telepharmacy, implementation of collaborative drug therapy management, and Joint Commission policies on patient safety.

Dr. Shely requested that patient safety be placed on the agenda of a future Board Meeting in order to formulate a resolution for NABP to incorporate patient safety into the NABP Model Rules. Dr. Shely would like the resolution to be shaped around systems not placing the individual practitioner under scrutiny. Mr. Burleson will provide the Board with the NABP Model Rules.

Mr. Orzali informed the Board that a date has not yet been set for the meeting of the NABP National Drug Task Force on Drug Diversion, of which he is a member.

**Board Executive Director.** 1) EMars monthly report for December 2007 was presented to the Board. 2) Mr. Burleson is pursuing different options with the building superintendent for sound proofing the Board Office. Mr. Burleson informed the Board that the cost for an eight foot table and 3 smaller tables to match the existing tablet in the Board room is approximately \$3887.50. Mr. Orzali moved for the Executive Director to continue to move forward on procuring the four tables for the Board room. Ms. Thornbury seconded and the motion passed unanimously. 3) There is a Special Called Board Meeting on February 13, 2008, beginning at 9:00 a.m. at the Board Office to discuss and formulate regulations for Automated Medication System, Common Database, and Centralized Processing of Prescription Drug Orders. 4) Mr. Burleson is working with the Commonwealth Office of Technology on purchasing laptop computers for Board Members and wiring the Board room.

**PRN Chair.** Brian Fingerson invited everyone to attend CAPTASA on January 25-26, 2008 in Lexington. Mr. Fingerson provided a statistical report on the Pharmacist Recovery Network (PRN) including total and current number of pharmacists being monitored, number of pharmacists' deaths, percentage of known relapses, and total and current number of monitored pharmacists known to the Board.

#### **CURRENT/PENDING CASES:**

##### **Case Updates:**

Ms. Thornbury moved for acceptance and entry of the proposed Agreed Orders as written. Dr. Shely seconded and the motion passed unanimously.

Case No. 04-0076; Case No. 05-0070; Case No. 06-0115E; Case No. 07-0024B; Case No. 07-0074; Case No. 07-0075A; Case No. 07-0077B; Case No. 07-0078B; Case No. 07-0088; and Case No. 07-0090.

**Case Review:** Mr. Orzali moved to accept the recommendation of Case Review Committee for Case No. 07-0104. Ms. Simpson seconded and the motion passed with Mr. Orzali, Dr. Shely, and Ms. Simspson voting for the motion, Ms. Thornbury abstaining, and Dr. Policastri recusing.

**Case No. 07-0104.** Pharmacy intern allegedly entered a guilty plea in Federal court to a felony charge involving mail fraud and money laundering. Alleged violations of law: KRS 315.121(1)(c) and KRS 315.121(3). **CRC Recommendation:** There is sufficient evidence of a violation to warrant disciplinary action and the Executive Director is directed to attempt resolution through an Agreed Order and, if unsuccessful, to proceed with either an Administrative Conference, if requested, or the issuance of a Formal Complaint and Notice of Hearing.

Mr. Orzali moved for acceptance of the Case Review Committee recommendations for the following case reports, excluding Case No. 07-0104. Dr. Shely seconded and the motion passed with Mr. Orzali, Dr. Policastri, Dr. Shely, and Ms. Simpson voting for the motion and Ms. Thornbury abstaining.

**Case No. 05-0101.** Pharmacist allegedly pled guilty to Federal charges of filling fraudulent prescriptions for oxycodone and money laundering. Alleged violation of law: KRS 315.121 (1)(c)1. **CRC Recommendation:** There is sufficient evidence of a violation to warrant disciplinary action and the Executive Director is directed to attempt resolution through an Agreed Order and, if unsuccessful, to proceed with either an Administrative Conference, if requested, or the issuance of a Formal Complaint and Notice of Hearing.

**Case No. 06-0001.** Pharmacist is allegedly impaired. Alleged violations of law: KRS 315.121.(1)(b) and (2)(f). **CRC Recommendation:** There is sufficient evidence developed and the investigator is directed to conduct further investigation.

**Case No. 07-0023A.** Pharmacy permit holder allegedly did not provide adequate security and control of its controlled substances. Alleged violation of law: 201 KAR 2:100 Section 1. **CRC Recommendation:** There is sufficient evidence of a violation to warrant disciplinary action and the Executive Director is directed to attempt resolution through an Agreed Order and, if unsuccessful, to proceed with either an Administrative Conference, if requested, or the issuance of a Formal Complaint and Notice of Hearing.

**Case No. 07-0023B.** Pharmacy pharmacist-in-charge allegedly did not provide adequate security and control of controlled substances. Alleged violation of law: 201 KAR 2:05 Section 2 (3)(b). **CRC Recommendation:** There is sufficient

evidence of a violation; however, the penalty shall be the issuance of a Letter of Reprimand.

**Case No. 07-0023C.** Pharmacist working relief was allegedly arrested and charged with five counts of trafficking and five counts of possession of controlled substances on 2/26/04. Pharmacist was allegedly arrested again on 4/27/07 for illegal distribution of oxycodone. At this arrest he was found to be a danger to the community and ordered to be detained until trial. Alleged violations of law: KRS 315.121(1) and (2). CRC Recommendation: There is sufficient evidence of a violation to warrant disciplinary action and the Executive Director is directed to attempt resolution through an Agreed Order and, if unsuccessful, to proceed with either an Administrative Conference, if requested, or the issuance of a Formal Complaint and Notice of Hearing.

**Case No. 07-0047(Revisit).** Pharmacist was allegedly caught and terminated by employer for stealing and ingesting hydrocodone/APAP. Alleged violation of law: KRS 315.121(2)(f). CRC Recommendation: There is sufficient evidence of a violation to warrant disciplinary action and the Executive Director is directed to attempt resolution through an Agreed Order and, if unsuccessful, to proceed with either an Administrative Conference, if requested, or the issuance of a Formal Complaint and Notice of Hearing.

**Case No. 07-0084A.** Pharmacy permit holder allegedly engaged in unprofessional and unethical conduct by committing a medication error. Prescription was written for regular insulin but patient received 70/30 insulin. Alleged violation of law KRS 315.121(2)(d). CRC Recommendation: There is insufficient evidence of a violation to warrant disciplinary action and the case is closed without prejudice.

**Case No. 07-0084B.** Pharmacist allegedly engaged in unprofessional and unethical conduct by committing a medication error. Prescription was written for regular insulin but patient received 70/30 insulin. Alleged violation of law KRS 315.121(2)(d). CRC Recommendation: There is sufficient evidence of a violation to warrant disciplinary action and the Executive Director is directed to attempt resolution through an Agreed Order and, if unsuccessful, to proceed with either an Administrative Conference, if requested, or the issuance of a Formal Complaint and Notice of Hearing.

**Case No. 07-0085.** Pharmacist intern allegedly engaged in unprofessional and unethical conduct by being accused of indecent exposure to a minor. The charge was dismissed. Alleged violation of law: KRS 315.121(1)(a). CRC Recommendation: There is insufficient evidence of a violation to warrant disciplinary action and the case is closed without prejudice.

**Case No. 07-0093A.** Pharmacy permit holder allegedly engaged in unprofessional conduct which departed from acceptable standards of practice.

Alleged violation law: KRS 315.121 (2)(d)(e). CRC Recommendation: Case is dismissed.

**Case No. 07-0093B.** Pharmacist allegedly engaged in unprofessional conduct which departed from acceptable standards of practice. Alleged violation law: KRS 315.121 (2)(d)(e). CRC Recommendation: Case is dismissed.

**Case No.07-0094A.** Pharmacy permit holder allegedly failed to provide adequate security of the pharmacy by allowing technicians in the pharmacy after hours and allegedly allowing technicians to engage in the practice of pharmacy by dispensing prescription medications without a pharmacist present. Pharmacist-in-charge allegedly has not been present in the pharmacy since on or about September 10, 2007. Alleged violations of law: 201 KAR 2:100 Section 1 and Section 4, KRS 315.010 (19) and 201 KAR 2:205 Section 2(2)(b) and (3)(a) and (b). CRC Recommendation: There is sufficient evidence of a violation to warrant disciplinary action and the Executive Director is directed to attempt resolution through an Agreed Order and, if unsuccessful, to proceed with either an Administrative Conference, if requested, or the issuance of a Formal Complaint and Notice of Hearing.

**Case No.07-0094B.** Pharmacist allegedly failed to provide adequate security of the pharmacy by allowing technicians in the pharmacy after hours and allegedly allowing technicians to engage in the practice of pharmacy by dispensing prescription medications without a pharmacist present. Pharmacist-in-charge allegedly has not been present in the pharmacy since on or about September 10, 2007. Alleged violations of law: 201 KAR 2:100 Section 1 and Section 4, KRS 315.010 (19) and 201 KAR 2:205 Section 2(2)(b) and (3)(a) and (b). CRC Recommendation: There is sufficient evidence of a violation to warrant disciplinary action and the Executive Director is directed to attempt resolution through an Agreed Order and, if unsuccessful, to proceed with either an Administrative Conference, if requested, or the issuance of a Formal Complaint and Notice of Hearing.

**Case No. 07-0098A.** Pharmacy permit holder allegedly sold a misbranded drug as the result of a medication error. Patient received amlodipine/benazepril 5/10 mg instead of the prescribed amlodipine/benazepril 5/20 mg. Patient did not take any of the medication. Alleged violations of law: KRS 217.065(1) and KRS 315.121(2)(d). CRC Recommendation: There is insufficient evidence of a violation to warrant disciplinary action and the case is closed without prejudice.

**Case No. 07-0098B.** Pharmacist allegedly engaged in unethical and unprofessional conduct by committing a medication error. Patient received amlodipine/benazepril 5/10 mg instead of the prescribed amlodipine/benazepril 5/20 mg. Patient did not take any of the medication. Alleged violations of law: KRS 217.065(1) and KRS 315.121(2)(d). CRC Recommendation: There is sufficient evidence of a violation to warrant disciplinary action and the Executive

Director is directed to attempt resolution through an Agreed Order and, if unsuccessful, to proceed with either an Administrative Conference, if requested, or the issuance of a Formal Complaint and Notice of Hearing.

**Case No. 07-0099A.** Pharmacy permit holder allegedly failed to provide proper security of pharmacy. Alleged violations of law: KRS 315.121 (1)(a) and 201 KAR 2:100 Section 1. CRC Recommendation: There is insufficient evidence of a violation to warrant disciplinary action and the case is closed without prejudice.

**Case No. 07-0099B.** Pharmacist allegedly failed to provide proper security of pharmacy and acted in an unprofessional manner. Alleged violations of law: KRS 315.121 (1)(a) and 201 KAR 2:100 Section 1. CRC Recommendation: There is sufficient evidence of a violation to warrant disciplinary action and the Executive Director is directed to attempt resolution through an Agreed Order and, if unsuccessful, to proceed with either an Administrative Conference, if requested, or the issuance of a Formal Complaint and Notice of Hearing.

**Case No. 07-0100.** Pharmacist allegedly committed 2 medication errors. Patient received alprazolam 0.25 mg instead of Altace 2.5 mg, second error occurred at another pharmacy. Alleged violation of law: KRS 315.121(2)(d). CRC Recommendation: There is sufficient evidence of a violation to warrant disciplinary action and the Executive Director is directed to attempt resolution through an Agreed Order and, if unsuccessful, to proceed with either an Administrative Conference, if requested, or the issuance of a Formal Complaint and Notice of Hearing.

**Case No. 07-0101A.** Pharmacy permit holder allegedly engaged in unprofessional and unethical conduct by faxing misleading information to a physician's office that included information regarding a different physician who was deceased. Alleged violations of law: KRS 315.121(1)(a) and (2)(a). CRC Recommendation: Case is dismissed.

**Case No. 07-0101B.** Pharmacist allegedly engaged in unprofessional and unethical conduct by faxing misleading information to a physician's office that included information regarding a different physician who was deceased. Alleged violations of law: KRS 315.121(1)(a) and (2)(a). CRC Recommendation: Case is dismissed.

**Case No. 07-0107.** Wholesaler permit holder allegedly stored and distributed medical gases without a Kentucky Wholesaler Permit. Alleged violations of law: 201 KAR 2:105 Section 2(1-2). CRC Recommendation: There is sufficient evidence of a violation to warrant disciplinary action and the Executive Director is directed to attempt resolution through an Agreed Order and, if unsuccessful, to proceed with either an Administrative Conference, if requested, or the issuance of a Formal Complaint and Notice of Hearing.

**Case No. 07-0091.** Pharmacist was allegedly arrested for diversion and was terminated by employer and is allegedly impaired. Alleged violations of law: KRS 315.121 (1)(b) and 2(d)(e). CRC Recommendation: There is sufficient evidence of a violation to warrant disciplinary action and the Executive Director is directed to attempt resolution through an Agreed Order and, if unsuccessful, to proceed with either an Administrative Conference, if requested, or the issuance of a Formal Complaint and Notice of Hearing.

**NABP:** Ms. Thornbury moved that Mr. Leake be the designated delegate to the annual NABP meeting. Dr. Shely seconded and the motion passed unanimously.

**LEGISLATION/REGULATIONS:**

The Board members were provided a copy of BR 122, an act relating to membership in organizations which hold closed meetings. The act will create a new section of KRS Chapter 61 to prohibit a public agency or public employee to use public funds to become a member of a private organization which holds closed meeting in violation of the Kentucky open meetings law. Ms. Lalonde explained that this would prevent Board Members from becoming members of any national organization. Ms. Thornbury moved to have the Executive Director correspond with Representative Damron and others to express the Board's concerns regarding BR 122. Dr. Policastri seconded and the motion passed unanimously.

**CONTINUING EDUCATION:**

Ms. Simpson moved to accept the continuing education programs 08-05 through 08-07 as recommended. Dr. Policastri seconded and the motion passed unanimously.

**OLD BUSINESS:** Mr. Burleson has reviewed some of the draft language for the Wholesaler Pedigree bill, but it will most likely be changed. Senator Denton has not contacted Mr. Burleson regarding the bill. He will keep the Board Members informed on this issue.

Mr. Burleson informed the Board that Representative Westrom will sponsor the Technician Registration bill. Brad Hall informed the Board that KPhA will support the Technician Registration bill.

Senator Roeding will again sponsor the bill to increase Board Member per diem during the 2008 Legislative Session.

A bill will be presented this Legislative Session similar to HB 233 from 2007, which will allow pharmacists additional responsibilities and duties. Mr. Burleson will keep the Board Members informed on this issue.

Mr. Orzali requested that Dr. Policastri's report from ASHP on technician registration be made available to KPhA, APSC, and other interested groups.

**NEW BUSINESS:** Brad Hall informed the Board that KPhA will be holding a press conference at 10:00 a.m. on January 30, 2008 in the Capitol Rotunda to roll out patient education material KPhA has developed through a \$1.52 million grant.

Mr. Orzali moved to change the December 2008 Board meeting from December 10 to December 17 because the date conflicts with ASHP in Florida. Dr. Policastri seconded and the motion passed unanimously.

**ADJOURNMENT:** On motion by Ms. Simpson, seconded by Ms. Thornbury, and passed unanimously, President Leake adjourned the meeting at 11:27 a.m. The next regularly scheduled Board meeting is scheduled to begin at 9:00 a.m. on March 12, 2008 at the Board Office. There will be a Special Called Board Meeting scheduled to begin at 9:00 a.m. on February 13, 2008 at the Board Office.

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Michael Burleson, R.Ph.  
Executive Director